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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. FONZIE FRANK PREADER, Defendant and Appellant.	H042497 (Santa Clara County Super. Ct. No. C1368342)

Following a jury trial, defendant Fonzie Frank Preader was found guilty of theft. The jury found true that the value of the stolen property, a collectible NASCAR firesuit worn and autographed by Darrell Waltrip, exceeded $950, which made the offense grand theft. (Pen. Code, §§ 484, 487, subd. (a).)[1] Through his counsel, defendant stipulated to the three prior strike allegations under the Three Strikes law (§§ 667, subds. (b)-(i)); 1170.12) and the prison prior enhancement allegation (§ 667.5, subd. (b)). After granting defendant's *Romero* motion (see *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) and striking the prior strike convictions for purposes of sentencing, the trial court suspended imposition of sentence and placed defendant on three years of formal probation.

On appeal, defendant challenges the sufficiency of the evidence to show that he was guilty of grand theft rather than petty theft. Defendant further argues that the trial court erred in overruling specific evidentiary objections, the prosecutor engaged in

[1] All further statutory references are to Penal Code unless otherwise specified.

misconduct, and defense counsel rendered ineffective assistance by failing to (1) object to certain evidence, (2) request a limiting instruction, (3) impeach a prosecution witness with two acts of moral turpitude, and (4) object to prosecutorial misconduct. Lastly, he claims that the alleged errors were cumulatively prejudicial and violated his constitutional rights to a fair trial.

We discern no error and affirm.

I

Evidence

Matthew S., a collector of firesuits, purchased a one-of-a-kind firesuit that had been worn and autographed by Darrell Waltrip from a pawn shop in Florida. Waltrip had retired 10 to 15 years prior to trial.

Before Matthew's purchase, the pawn shop had listed the firesuit on eBay. The pawn shop's eBay listing described the firesuit as a "Darrell Waltrip autographed diet mountain dew firesuit with certificate of authenticity from the [N]ascar [F]oundation in great shape with only lite stains." Evidence of the listing showed that a minimum bid of $500 had been required and that the bidding had ended on June 11, 2013 with zero bids, but the listing did not specify when the bidding had started or whether the auction had been immediately pulled from the site.

After the pawn shop's listing of the firesuit on eBay had ended, Matthew emailed the seller and offered to buy it for less money than the minimum bid price. An invoice reflected that he paid $375 on PayPal to the pawn shop on July 2, 2013. Matthew could not recall whether he had separately paid any additional money.[2]

A listing from the NASCAR Foundation website showed that the firesuit had been previously auctioned in June 2012, and the high bid was $1,250. The auction listing described the item as "Event Used Diet Mountain Dew firesuit signed by Darrell

[2] The pawn shop's eBay listing indicated that standard shipping was free.

Waltrip" and displayed a photograph of the firesuit. It indicated that Waltrip had actually worn and signed the firesuit during a charity event at the Charlotte Motor Speedway.

The package containing the Waltrip firesuit was supposed to have been delivered to Matthew's home, but he did not receive it. Matthew reported to the Los Gatos Police Department that the firesuit had been stolen. A short time later, Matthew discovered that the firesuit was listed for auction on eBay and gave that information to Officer William Hoyt, who was one of the officers investigating the case.

A prosecution witness (hereinafter C.), who was the boyfriend of the daughter of defendant's girlfriend testified under a grant of use immunity. On July 11, 2013, defendant drove with C. to the library, where they picked up DVD's. Afterward, they were driving on a street in Los Gatos and saw a package on a doorstep. Defendant, who was driving, stopped the car. They talked about the fact that it did not make sense for defendant to go get the package because he was the driver, whereas C. was the passenger. While the car was running, C. got out of the car and took the package. C. opened the package and found that it contained the firesuit and a certificate of authenticity. While still in the car, defendant said that he thought the firesuit was worth a lot, and C. looked it up online and found the record of the Nascar Foundation auction. Defendant talked about perhaps putting the firesuit on eBay.

Defendant and C. continued to drive around, and that day they took three additional packages, which contained a chef's knife, jewelry, and shoes from Zoomies, a skateboard store. In each instance, defendant stopped the car and C. got out, took the package, and returned to the car. Defendant then indicated that they should stop to avoid being caught.

Defendant had set up an eBay account under the name and email address of his girlfriend with whom he was living in Campbell, and he was the only person who used that account to list items for auction. A printout of an eBay record showed that a "Nascar Used Diet Mountain Dew firesuit signed by Darrell Waltrip" had been posted for auction

on that eBay account beginning on Friday July 12, 2013 and ending on Saturday July 13, 2013. It indicated that the seller had identified Chiloquin, Oregon as the location of the sale. Defendant's girlfriend never had been there, and she had no relationship to the place. Defendant and his girlfriend resided together in Campbell, California in July 2013.

After Officer Hoyt had tried to contact C., defendant told C. to say that they found the firesuit when "a guy" was "dropping off Goodwill donations" at the Goodwill drop-off location at Almaden Lake and advised C. that the matter would be dropped if they used "the same exact story." C. gave an account to that effect to the officer. But Officer Hoyt continued to press C. because the officer did not believe the story.

At trial, C. admitted to taking sandals from a gift shop, a phone from a table in a Chuck E. Cheese location, and a Bianchi bike found in front of a liquor store and to keeping the money obtained when he sold an item on behalf of his mother—who was a seller at an antique fair—while she went to the restroom. C. testified that he had stolen from his mother multiple times.

During the investigation, Officer Hoyt spoke with defendant's girlfriend while defendant and she were in a car returning from a trip. Defendant and his girlfriend offered to have someone who was at their house open defendant's car for Officer Hoyt so that the officer could get the firesuit. Officer Hoyt retrieved the firesuit from the trunk of defendant's car.

Later, at defendant's home, defendant gave a box containing a chef's knife, which appeared to be new, to Officer Hoyt, and he told the officer that "it was another one of the items that he had found." The knife was one of the items that had been listed for sale on his girlfriend's eBay account. Defendant was arrested.

At trial, Matthew agreed that he knew a lot about Nascar and car racing. Matthew had collected firesuits for over a decade, and he had collected approximately 20 to 30 firesuits. He conducted research on the things he bought.

Matthew explained that the worth of a firesuit depended upon the driver who had worn it and its rarity. He indicated that firesuits worn by drivers who "come out of retirement to do special charity events" were worth more money than firesuits worn for a whole year. He also indicated that the older firesuits were worth more.

The prosecutor asked Matthew for his opinion regarding the stolen firesuit's value based on his experience and training as a collector. Defense counsel objected on grounds of improper opinion and lack of foundation, and the trial court overruled the objections. Matthew answered, "The firesuit to me is worth over $2,000."

Matthew's reasons for his opinion were that the firesuit was "a one off," there were "plenty of people in the world that like Darrell Waltrip," and "the rarer the firesuit, the more money it goes for." In addition, the last firesuit sold on eBay that Matthew had found was a Darrell Waltrip firesuit, and it had sold for $2,500. When asked about how much he could sell the stolen firesuit for "right now," Matthew indicated that he would start the bidding at $2,000 or "even close up to 3,000." Matthew thought that only two or three Waltrip firesuits had been made for Waltrip during his lifetime and reiterated that one Waltrip firesuit had sold for $2,500. Matthew thought that he could sell the firesuit that had been stolen by defendant for approximately $2,500.

Matthew confirmed that the stolen firesuit had sold for $1,250 in June 2012 and that he had given a printout of that auction listing to the investigating officer. He acknowledged that he had paid $375 on Paypal when he bought the firesuit from the pawn shop in Florida.

Matthew agreed that the price of firesuits varied. Matthew had bought a firesuit for $300 a week before trial, and he had bought another firesuit for $2,700 two weeks before trial.

II

Discussion

A. *Sufficiency of the Evidence*

Defendant asserts that the evidence was insufficient to support a jury finding that the fair market value of the stolen property was more than $950. He contends that the only relevant evidence of the property's fair market value at or near the time of the theft was the actual price paid by Matthew—namely, $375—for the firesuit. Defendant argues that this was the "only one data point of evidence . . . that met the criminal law's definition [of] 'fair market value' " applicable in this case and that there was no evidence showing that around the time of the theft "the suit would [have] fetch[ed] more than $950 between a willing buyer and a willing seller."

1. *Standard of Review*

"The law is clear and well settled. 'On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320.)' " (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) "The relevant inquiry is whether, in light of all the evidence, a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. [Citation.]" (*People v. Gomez* (2018) 6 Cal.5th 243, 278 (*Gomez*).)

"In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination

depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the jury's verdict. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

2. *Governing Law*

Section 484, subdivision (a), generally defines the crime of theft. It states in part: "In determining the value of the property obtained [by theft], for the purposes of this section, the reasonable and fair market value shall be the test." "Though section 484, subdivision (a), says 'for the purposes of this section,' section 484 is a definitional section. It sets the ground rules for how theft crimes are adjudicated—for example, how various terms are defined, how value must be calculated, and how certain evidentiary presumptions operate. . . . [C]ourts have long required section 484's 'reasonable and fair market value' test to be used for theft crimes that contained a value threshold, such as violations of section 487, subdivision (a). [Citations.]" (*People v. Romanowski* (2017) 2 Cal.5th 903, 914 (*Romanowski*).)

Section 487, subdivision (a), generally provides that "[g]rand theft is theft committed" under current law "[w]hen the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950) . . . ." (See 490.2, subd. (a) [defining petty theft][3].) "Courts must use section 484's 'reasonable and fair

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[3] Section 490.2 was added in November 2014 when the voters approved Proposition 47. (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Proposition 47, § 8, p. 72.) With exceptions not shown to be applicable here, section 490.2, subdivision (a), provides in pertinent part: "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor . . . ." Section 490.2 retroactively applied to defendant because he had not yet been sentenced on its effective date. (See *People v. DeHoyos* (2018) 4 Cal.5th 594, 597, 601-603.)

market value' test when applying section 490.2's value threshold for theft crimes." (*Romanowski, supra,* 2 Cal.5th at p. 914.)

"When you have a willing buyer and a willing seller, neither of whom is forced to act, the price they agree upon is the highest price obtainable for the article in the open market. Put another way, 'fair market value' means the highest price obtainable in the market place rather than the lowest price or the average price. . . . It is not the highest price in the market but the highest price a willing buyer and a willing seller will arrive at." (*People v. Pena* (1977) 68 Cal.App.3d 100, 104 (*Pena*); see CALCRIM No. 1801; CALJIC No. 1426.) "If some stores would underprice the items or would give them away that would not be representative of the fair market value." (*Pena, supra,* at p. 103.)

3. *Analysis*

The "[m]arket value of personal property may, of course, be established by testimony of expert witnesses, but this is not the only method." (*Bagdasarian v. Gragnon* (1948) 31 Cal.2d 744, 755.) "[T]he reasonable value of marketable personal property may be shown by market prices or actual specific sales of *other similar* property, provided such sales are bona fide and not too remote in time or place [citations]." (*Id.* at pp. 755-756.) Also, the "market value of personal property may be shown by the price paid for that identical property or by the price obtained for it at a subsequent sale. [Citations.]" (*Id.* at p. 756.) Further, "[t]he general rule is that sale of similar personal property may be used to show the value of personal property. [Citation.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 886 (*Foreman*); see 1 Witkin, Cal. Evid. (5th ed. 2012) Circumstantial Evidence, § 118, p. 525.)

" 'Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence. [Citation.]' [Citation.]" (See *People v. Clark* (2011) 52 Cal.4th 856, 943; cf. *State v. Weik* (Neb. 1980) 292 N.W.2d 289, 291 [market value of the stolen property as of the date of the commission of the offense "may be established circumstantially, as well as by direct evidence"].) Defendant is mistaken that

evidence of a sale of the same or similar personal property is irrelevant as a matter of law if that sale occurred a year before the theft in July 2013.

In addition, "[t]he opinion of an owner of personal property is in itself competent evidence of the value of that property, and sufficient to support a judgment based on that value. [Citations.] 'The credit and weight to be given such evidence and its effect . . . is for the trier of fact.' [Citation.]" (*Schroeder v. Auto Driveaway Co*. (1974) 11 Cal.3d 908, 921 (*Schroeder*); cf. Evid. Code, §§ 811, 813.) Defendant claims that the evidence was insufficient because Matthew was "never questioned with terms such as 'market value.' " But he was asked for his opinion regarding the firesuit's "value based on [his] collection of firesuits and [his] training [as to] the value of that firesuit." His response could be reasonably understood as stating an opinion that the firesuit was "worth over $2,000" at the time of trial.

In *People v. Henderson* (1965) 238 Cal.App.2d 566 (*Henderson*), the defendant argued that the evidence was insufficient to prove grand theft in that it did not "establish that the articles [taken a watch and a ring] were worth more than $200" and that "evidence of value can be given only by one who has some expertise, whether or not he is the owner." (*Id*. at p. 566.) The appellate court explained: "The California rule is to the contrary (*People v. More* [(1935)] 10 Cal.App.2d 144 [jewelry]; *People v. Coleman* [(1963)] 222 Cal.App.2d 358 [tools]; *People v. Lenahan* [(1940)] 38 Cal.App.2d 39 [shares of capital stock]; *People v. Haney* [(1932)] 126 Cal.App. 473 [horse-related personal property]) as is also the general rule (3 Wigmore on Evidence [3d ed.] § 716; 2 Wharton's Criminal Evidence, 414)." (*Id*. at pp. 566-567) Thus, an owner's testimony is admissible regardless of whether he is an expert in valuation of a particular type of property. "The weight to be given the owner's testimony as to value is for the trier of the fact (3 Wigmore on Evidence, *supra*)." (*Id*. at p. 567; see *Pena, supra,* 68 Cal.App.3d at p. 103 [a jury is not required to "accept whatever value is placed on the article either by its owner or by an expert"].)

" 'Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.' [Citations.]" (*People v. Brown* (2014) 59 Cal.4th 86, 106.) Also, "[i]t is well settled that the trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. [Citations.]" (*Stevens v. Parke, Davis & Co*. (1973) 9 Cal.3d 51, 67.)

The jurors could reasonably conclude that when Matthew opined regarding the worth of the stolen firesuit ("The firesuit to me is worth over $2,000"), he was not talking about its mere emotional or sentimental value to him as defendant now intimates. Similarly, the jurors could reasonably conclude that when Matthew testified regarding the price at which the firesuit could be sold "right now," he was not describing "a hoped-for sales price at some time in the future." In opining regarding the price at which the firesuit could be sold at the time of trial, Matthew impliedly had considered the various factors affecting the stolen firesuit's value and the price for which a comparable Waltrip firesuit had sold on eBay. The jury could reasonably infer from Matthew's opinions regarding the firesuit's worth and the price at which it could be sold "right now" that he was talking about its fair market value at the time of trial in January 2015.

Contrary to defendant assertion, Matthew's opinions were not irrelevant as a matter of law. (See Evid. Code, § 210; *People v. Freeman* (1994) 8 Cal.4th 450, 491 (*Freeman*) [" 'Evidence is relevant when no matter how weak it may be, it tends to prove the issue before the jury.' [Citation.]"; see also CALCRIM No. 1801 ["The defendant committed petty theft if (he/she) stole property . . . worth $950 or less"].) Any contention that such evidence was too remote in time went to the weight of the evidence, which the jury determined. (See *Foreman, supra,* 3 Cal.3d at p. 886; *Los Angeles County Flood Control Dist. v. McNulty* (1963) 59 Cal.2d 333, 337; *Clar v. Board of Trade* (1958) 164 Cal.App.2d 636, 648.)

The evidence of the Nascar Foundation's auction price of the firesuit, in conjunction with Matthew's testimony that it was a unique collector's item and his opinions indicating its fair market value at the time of trial, had some tendency in reason to prove that the stolen firesuit's fair market value at the time of the theft—which occurred in the interim—exceeded $950.

Further, the jurors were not required to accept that the price at which Matthew had recently bought the firesuit from a pawn shop was the only relevant and the most persuasive evidence of its fair market value at the time of the theft. The jurors could rely on their personal knowledge and experience regarding pawn shops in evaluating the evidence and drawing inferences therefrom. (See *People v. Linton* (2013) 56 Cal.4th 1146, 1195 ["A juror's application of his or her everyday life experience to the evaluation of evidence is not misconduct"]; *People v. Leonard* (2007) 40 Cal.4th 1370, 1414 ["jurors may rely on their own experiences in evaluating the testimony of the witnesses"]; cf. *Wade v. Markwell & Co.* (1953) 118 Cal.App.2d 410, 433 ["There was no inducement for defendant to find a purchaser at its true value when it could reap a handsome—and quick—profit at the amount for which it sold the [pawned mink] coat"].)

The fact that the stolen firesuit had garnered no bids as a result of the pawn shop's or defendant's eBay listing did not necessarily indicate that its fair market value was $950 or less. The printout of the pawn shop's eBay listing did not show that the firesuit had been listed for auction for any meaningful length of time. Defendant had listed the firesuit for auction on eBay for less than two full days. When weighing the evidence and resolving evidentiary conflicts, the jury could reasonably conclude that those auction attempts had little or no probative value as to the firesuit's fair market value. The fair market value of property contemplates that the property is exposed for sale on the open market for a reasonable length of time that allows a willing buyer and a willing seller to come together on a sale. (Cf. *Sacramento Southern R. Co. v. Heilbron* (1909) 156 Cal. 408, 409 [the market value is "the highest price estimated in terms of money which the

land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable"].) For example, the evidence indicated that the stolen firesuit had been listed on the Nascar Foundation auction site for 13 days when it sold in June 2012.

It is our conclusion that the evidence was sufficient to establish that the value of the collectible firesuit, which was worn and signed by Darrell Waltrip, exceeded $950 when it was stolen by defendant. "We may not reweigh the evidence or substitute our judgment for that of the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)" (*People v. Ewing* (2016) 244 Cal.App.4th 359, 371.) A reviewing court's opinion that the evidence could be reasonably reconciled "with a finding of innocence or a lesser degree of crime does not warrant a reversal of the judgment. [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 849 (*Hill*).)

B. *Challenged Evidentiary Rulings*

1. *Governing Law*

Evidence Code section 353, subdivision (a), provides: "A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion; and [¶] (b) The court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground stated and that the error or errors complained of resulted in a miscarriage of justice." (See Cal. Const., art. VI, § 13.)

"Reviewing courts will generally not consider a challenge to the admissibility of evidence unless there was a ' " 'specific and timely objection in the trial court on the [same grounds] sought to be urged on appeal.' " ' [Citations.]" (*Gomez, supra,* 6 Cal.5th at p. 286.) "To satisfy Evidence Code section 353, subdivision (a), the objection or

motion to strike must be both timely *and* specific as to its ground. . . . [A party] cannot make a 'placeholder' objection stating general or incorrect grounds . . . and revise the objection later in a motion to strike stating specific or different grounds." (*People v. Demetrulias* (2006) 39 Cal.4th 1, 22.)

An evidentiary objection must "fairly inform the trial court, as well as the party offering the evidence, of the specific reason or reasons the objecting party believes the evidence should be excluded, so the party offering the evidence can respond appropriately and the court can make a fully informed ruling." (*People v. Partida* (2005) 37 Cal.4th 428, 435 (*Partida*).) "If the court overrules the objection, the objecting party may argue on appeal that the evidence should have been excluded for the reason asserted at trial, but it may not argue on appeal that the court should have excluded the evidence for a reason different from the one stated at trial. A party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct." (*Ibid.*)

Nevertheless, a defendant may argue on appeal that an asserted error in admitting evidence over an evidentiary objection had "the additional legal consequence of violating due process" or other constitutional right. (*Partida, supra*, 37 Cal.4th at p. 435.) "To the extent, if any, that defendant may be understood to argue that due process required exclusion of the evidence for a reason different from his trial objection, that claim is forfeited." (*Id.* at p. 436, see *id.* at p. 438.) In other words, a defendant forfeits "his contention of constitutional error by failing to assert it below, except to the extent that the constitutional claim relies on the same facts and legal standards the trial court itself was asked to apply, and asserts merely that the trial court's act or omission, insofar as wrong for the reasons actually presented to that court, had the additional legal consequence of violating the Constitution." (*People v. Ervine* (2009) 47 Cal.4th 745, 783.) "[R]ejection, on the merits, of a claim that the trial court erred on the issue actually before that court necessarily leads to rejection of the newly applied constitutional 'gloss' as well." (*People v. Boyer* (2006) 38 Cal.4th 412, 441, fn. 17.)

2. *Owner's Opinion of Stolen Firesuit's Worth*

Citing *People v. Lizarraga* (1954) 122 Cal.App.2d 436, defendant asserts that when the prosecution asked for Matthew's opinion of the stolen firesuit's value and defense counsel objected on grounds of improper opinion and lack of foundation, the trial court erred in overruling the objection. In *Lizarraga*, the defendant contended that the evidence had not established "the reasonable value" of a stolen fur and that "the markup on furs [was] excessively high." (*Id*. at p. 437.) The appellate court rejected the argument, finding that the witnesses, two furriers, were competent to testify. (*Id*. at pp. 437-438.) The court stated that " '[t]he value to be placed upon stolen articles for the purpose of establishing a felony charge is the fair market value of the property and not the value of the property to any particular individual.' [Citation.]" (*Id*. at p. 438.)

As already explained, an owner of personal property may give his opinion of its value, and the jurors could reasonably understand Matthew's response to the question as to his opinion of the value as expressing his opinion of the stolen firesuit's fair market value. (See *Schroeder*, *supra*, 11 Cal.3d at p. 921; *Henderson*, *supra*, 238 Cal.App.2d at pp. 566-567.) Defendant has not cited any authority establishing that a foundation beyond ownership must be laid before an owner of personal property may give his or her opinion of its value.

3. *Owner's Opinion of the Current Selling Price*

At trial, the prosecutor asked Matthew, the owner of the stolen firesuit, his opinion regarding how much he could sell it for "right now." Defense counsel objected on the ground of speculation, and the trial court overruled the objection. As we have recited, Matthew indicated that if he were selling the firesuit, he would offer to sell "at $2,000 and even close up to 3,000, depending on who want[ed] the firesuit[,] being as rare as it is." He noted that Darrell Waltrip had two or three firesuits in his lifetime and one had sold for $2,500. In Matthew's opinion, the stolen firesuit could be sold for approximately $2,500.

Without any citation to authority or the record and without any legal analysis, defendant perfunctorily argues that the trial court erred in overruling defense counsel's "objection of speculation and lack of foundation" and allowing Matthew "to testify to what he thought he could sell the suit for." Defendant now contends that the speculation objection was valid because "the question related to a future sale and implied a willing buyer existed." In the absence of any meaningful legal analysis, we find this claim of error was forfeited. (See *People v. Stanley* (1995) 10 Cal.4th 764, 793 (*Stanley*); Cal. Rules of Court, rule 8.204(a)(1)(B) & (C)[4].) In any case, it is meritless.

A trial court's ruling on such an evidentiary objection is reviewed under the deferential abuse of discretion standard. (See *People v. Waidla* (2000) 22 Cal.4th 690, 723; see also *People v. Thornton* (2007) 41 Cal.4th 391, 429.) Since the jurors could reasonably understand Matthew's testimony regarding the price at which the stolen firesuit could be sold as his opinion of its fair market value at the time of trial and since an owner of personal property is qualified to give an opinion as to its value (see *Schroeder*, *supra*, 11 Cal.3d at p. 921; *Henderson*, *supra*, 238 Cal.App.2d at pp. 566-567), the trial court acted within its discretion in overruling the speculation objection.

Defendant also contends that there was no foundation for Matthew's testimony regarding the current price at which the stolen firesuit could be sold because the prosecution had not presented any evidence as "to why [Matthew] believed he could sell the suit for that amount" and that the evidence was also irrelevant because "the pertinent question" was the firesuit's fair market value at the time of the theft and "not some speculative future sale."[5] Since no objection on the ground of lack of foundation or irrelevance was interposed when Matthew was asked about the price at which he could

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[4] All further references to rules are to the California Rules of Court.

[5] The prosecutor later asked on redirect examination, "Did someone say they'd be willing to buy it for that much?" Defense counsel objected based on foundation and "notice." The court sustained the objection.

currently sell the firesuit, those objections were forfeited.[6] (See Evid. Code, § 353.) Also, because defendant's present contentions are not accompanied by legal authority or legal analysis, they are also deemed forfeited on appeal. (See *Stanley*, *supra*, 10 Cal.4th at p. 793; rule 8.204(a)(1)(B) & (C).) In any case, those contentions lack merit.

We reiterate that defendant has not cited any authority establishing that a foundation beyond ownership must be laid before an owner of personal property may testify as to its fair market value and that Matthew's testimony regarding the price at which the stolen firesuit could be sold could be reasonably understood as his opinion of its fair market value at the time of trial, which was circumstantial evidence of its fair market value at the time of the theft. We also note that Matthew's opinion as an owner was based in part on his knowledge of firesuits as a collector and the sales price of a comparable Waltrip firesuit sold on eBay. Defense counsel was free to cross-examine Matthew regarding those matters to enable the jurors to decide the proper weight and credibility to be accorded his testimony.

None of the trial court's evidentiary rulings on defense objections raised below, and now challenged on appeal, were erroneous. The objections not raised below were forfeited. (See Evid. Code, § 353.)

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[6] Defendant alternatively contends that a relevance objection was futile because the trial court had overruled defense counsel's prior two objections. Just before Matthew gave his opinion regarding the current price at which the stolen firesuit could be sold, the trial court overruled the defense counsel's speculation objection. And only a few moments earlier, the trial court overruled the defense counsel's hearsay objection to a question concerning whether Matthew had considered the sales of comparable Darrel Waltrip firesuits in concluding that the stolen firesuit was worth over $2,000. Nothing about those two rulings indicates that it would have been futile to interpose a relevance objection. There was no evidence that the trial court was biased or predisposed to rule against defendant or his counsel regardless of the validity of an objection. (Cf. *People v. Boyette* (2002) 29 Cal.4th 381, 432 [bias of trial court evidenced by prior rulings]; *People v. Hillhouse* (2002) 27 Cal.4th 469, 501-502 [poisonous courtroom atmosphere].)

C. *Alleged Ineffective Assistance of Counsel*

1. *Governing Law*

The standard for evaluating a claim of ineffective assistance of counsel is well established. It requires a two-prong showing of deficient performance and resulting prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 (*Strickland*).) "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." (*Id*. at p. 700.)

As to deficient performance, a defendant "must show that counsel's representation fell below an objective standard of reasonableness" measured against "prevailing professional norms." (*Strickland, supra*, 466 U.S. at p. 688.) "Judicial scrutiny of counsel's performance must be highly deferential." (*Id*. at p. 689.) "[E]very effort" must "be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." (*Ibid*.) "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." (*Ibid*.)

The prejudice prong requires a defendant to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland, supra,* 466 U.S. at p. 694.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Ibid*.)

"In assessing prejudice under *Strickland,* the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel [had] acted differently. [Citations.] Instead, *Strickland* asks whether it is 'reasonably likely' the result would have been different. [Citation.] This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.' [Citation.] The likelihood of a different result must be substantial, not

just conceivable. [Citation.]" (*Harrington v. Richter* (2011) 562 U.S. 86, 111-112 (*Harrington*).)

"A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed." (*Strickland*, *supra*, 466 U.S. at p. 697.)

2. *Admission of Evidence*

Defendant asserts that defense counsel provided ineffective assistance of counsel by (1) failing to object to irrelevant evidence of the firesuit's value and (2) seeking to elicit evidence that the victim had "overinflated the value of the suit when he reported the theft to the police." He claims that his defense counsel should have objected to the following evidence as irrelevant: (1) Matthew's opinions regarding the worth of the stolen firesuit (over $2,000) and the price at which it could be sold at the time of trial (approximately $2,500), (2) the cost of manufacturing a firesuit (over $1,500), (3) the sales price of a different Darrel Waltrip firesuit on eBay on an unspecified date ($2,500), and (4) the sales price of the stolen firesuit on the Nascar Foundation auction site in June 2012 ($1,250). Defendant suggests that the trial counsel should have requested a limiting instruction telling the jury that "it could only consider the fact that [Matthew] told the police [that] he bought the suit for $1250[,] or that the suit was worth $1250, as evidence of [his] bias and credibility . . . and not as evidence of the suit's fair market value."

All of the challenged evidence regarding worth or value of the stolen firesuit at the time of trial and the prior sales price of the same firesuit was relevant for the reasons already discussed in concluding the evidence was sufficient to support conviction.[7]

[7] Without citation to legal authority, defendant implies that his counsel rendered ineffective assistance by failing to object to the admission at trial of the printout of the 2012 Nascar Foundation online auction of the stolen firesuit (People's exhibit 7) or to

Consequently, defense counsel did not render ineffective assistance by not objecting to that evidence or not requesting a limiting instruction. (See *People v. Ochoa* (1998) 19 Cal.4th 353, 463 ["Representation does not become deficient for failing to make meritless objections"]; *People v. Price* (1991) 1 Cal.4th 324, 387 ["Counsel does not render ineffective assistance by failing to make motions or objections that counsel reasonably determines would be futile"].)

Defendant suggests that his counsel should have moved to strike Matthew's volunteered testimony regarding the cost of manufacturing a firesuit and should have objected to Matthew's testimony regarding the eBay sales price of another Waltrip firesuit, which Matthew considered in opining that the stolen firesuit could sell for $2,500, because the date of that sale had not been established and no foundation had been laid that the suits were similar. Defendant fails to show that his counsel's lack of objection constituted deficient performance.

"[E]ven when there was a basis for objection, ' "[w]hether to object to inadmissible evidence is a tactical decision; because trial counsel's tactical decisions are accorded substantial deference [citations], failure to object seldom establishes counsel's incompetence." (*People v. Hayes* (1990) 52 Cal.3d 577, 621.) "In order to prevail on [an ineffective assistance of counsel] claim on direct appeal, the record must affirmatively disclose the lack of a rational tactical purpose for the challenged act or omission."

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seek redaction of the amount of the high bid ($1,250) on the printout. Defendant does not specify the legal ground that his counsel should have raised in objecting to, or seeking redaction of, People's exhibit 7. Consequently, his argument is deemed forfeited on appeal. (See *Stanley*, *supra*, 10 Cal.4th at p. 793; rule 8.204(a)(1)(B) & (C).) In any case, any claim that the Nascar Foundation auction price for the stolen firesuit was irrelevant as a matter of law would have been meritless for the reasons already discussed. A counsel's failure to make a meritless objection or motion does not constitute deficient performance. (See *People v. Coddington* (2000) 23 Cal.4th 529, 625, overruled on another point in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13; *People v. Kipp* (1998) 18 Cal.4th 349, 373.)

(*People v. Ray* (1996) 13 Cal.4th 313, 349.)' (*People v. Williams* [(1997) 16 Cal.4th 153,] 215.)" (*People v. Majors* (1998) 18 Cal.4th 385, 403.)

In this case, even assuming the cost of manufacturing a firesuit was irrelevant, defense counsel might have reasonably decided not to move to strike Matthew's testimony that the manufacturing cost was $1,500 because the jury would be instructed that to find defendant guilty of grand theft, the prosecution was required to prove beyond a reasonable doubt that the stolen firesuit's fair market value at the time of theft was more than $950 and a defense objection would have only highlighted that dollar amount for the jury. (Cf. *People v. Williams*, *supra*, 16 Cal.4th at p. 215.) Similarly, defense counsel might have reasonably decided not to object to Matthew's testimony regarding the eBay sale of another Waltrip firesuit since doing so might have run the risk that the People would have overcome any objection on the grounds of irrelevance or lack of foundation by showing that the eBay sale was of a similar Waltrip firesuit and not remote in time and that any differences between the Waltrip firesuits supported a conclusion that the stolen firesuit was more valuable.

In any case, "[o]n direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) Defendant has shown none of the above.

3. *Cross-Examination of Matthew*

Insofar as defendant is arguing that his counsel acted deficiently when he sought to impeach Matthew by showing through his cross-examination of Matthew (and Officer Hoyt) that Matthew had lied to Officer Hoyt by telling the officer that he had paid $1,250 for the stolen firesuit, the argument is without merit. Defendant maintains that eliciting further information about the $1,250 sale presented to the jury "irrelevant and confusing evidence, which allowed the jury to embrace a value far beyond the sale price

nine days before the theft." He contends that defense counsel's choice to impeach Matthew with that evidence was "an irrational decision that fell below the standard of care" because "[Matthew's] credibility was not an issue in the case."

As explained, Matthew's testimony regarding the worth of the stolen firesuit and the price at which he could sell it at the time of trial—i.e., its fair market value and the factors that he had considered in reaching his opinion—was relevant and admissible evidence because it was indirectly probative of the firesuit's fair market value at the time of theft. Therefore, Matthew's credibility was at issue, and evidence tending to discredit him was also highly relevant. (See Evid. Code, § 210.) "Although in extreme circumstances cross-examination may be deemed incompetent [citation], normally the decision to what extent and how to cross-examine witnesses comes within the wide range of tactical decisions competent counsel must make. [Citation.]" (*People v. Cleveland* (2004) 32 Cal.4th 704, 746 (*Cleveland*).) Thus, even though defense counsel's impeachment strategy resulted in the repetition of the $1,250 amount multiple times in cross-examination, defendant fails to demonstrate that his counsel's decision to seek to impeach Matthew constituted deficient performance.

4. *Failure to Impeach C. with Evidence of Moral Turpitude*

Defendant argues that defense counsel rendered ineffective assistance by not impeaching C. with two acts of moral turpitude. He points to documentary evidence attached to the defense's in limine motion seeking permission to impeach C. with his admission of an allegation in a 2014 juvenile wardship petition that he violated section 243, subdivision (e), (misdemeanor battery of a person with whom he was in a dating relationship) in July 2014 (approximately a year after the theft).

The trial court was not convinced that C.'s juvenile adjudication of misdemeanor battery was a crime of moral turpitude. (Cf. *People v. Mansfield* (1988) 200 Cal.App.3d 82, 88-89 [trial court erred in allowing felony battery conviction to be used for impeachment because a battery resulting in serious bodily injury in violation of

section 243, subdivision (d), was not a crime necessarily involving moral turpitude].) In any case, the court ruled that the evidence was inadmissible under Evidence Code section 352. Defendant has not challenged that ruling on appeal.

Rather, defendant contends that "competent counsel would have attempted to impeach [C.] with two acts that amounted to moral turpitude"—i.e., the acts underlying the two admitted allegations in the 2014 juvenile wardship petition—instead of merely seeking to impeach him with a juvenile adjudication of battery. Based upon the partially redacted materials attached as an exhibit to the defense's in limine motion, defendant argues that "it is likely that [C.] admitted violations of domestic battery causing injury or witness dissuasion in violation of Penal Code sections [*sic*] 273.5 [willful infliction of corporal injury] or 136.1, subdivision (b)(1) or (c) [attempted dissuasion of a witness]." Defendant refers us to the juvenile wardship petition's second allegation, which was completely redacted, and the unredacted portions of other documents. Defendant asserts that defense counsel had no tactical reason not to attempt to impeach C. with the conduct underlying his juvenile adjudications. Citing several cases, defendant maintains that C.'s conduct probably involved moral turpitude.

Defendant has not demonstrated that defense counsel's performance fell below professional norms by not seeking to further impeach C. (See *Strickland*, *supra*, 466 U.S. at pp. 688-689.) First, to the extent this ineffective assistance claim relies upon speculative facts outside the appellate record, it is not a proper argument on appeal. (See *People v. Mickel* (2016) 2 Cal.5th 181, 198; see also *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Our review on a direct appeal is ordinarily limited to the appellate record. (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1372 (*Seumanu*); *People v. Barnett* (1998) 17 Cal.4th 1044, 1183 (*Barnett*).)

Second, decisions regarding impeachment of a witness are tactical. (See *Barnett*, *supra*, 17 Cal.4th at p. 1140; see also *Cleveland*, *supra*, 32 Cal.4th at p. 746.) Defense counsel might have concluded that there was already sufficient evidence to impeach C.,

who had admitted numerous thefts (see *People v. Gurule* (2002) 28 Cal.4th 557, 608 ["theft crimes necessarily involve an element of deceit"]) and had initially lied to Officer Hoyt. Defendant has not demonstrated that counsel's conclusion fell below professional norms.

Third, a failure to make a futile objection or motion does not constitute ineffective assistance of counsel. (See *People v. Thompson* (2010) 49 Cal.4th 79, 122.) " 'Past criminal conduct involving moral turpitude that has some logical bearing on the veracity of a witness in a criminal proceeding is admissible to impeach, *subject to the court's discretion under Evidence Code section 352*.' [Citation.]" (*People v. Smith* (2007) 40 Cal.4th 483, 512, italics added.) Here, the trial court had already ruled that defense counsel could *not* impeach C. with his juvenile adjudication of misdemeanor battery, even if it was a crime of moral turpitude, because of the "great potential for an undue consumption of time." The court had indicated that the defense was free to question C. about the various thefts that he had admitted at the preliminary hearing. It implicitly concluded that the probative value of that impeachment evidence was "substantially outweighed by the probability that its admission will . . . necessitate undue consumption of time." (Evid. Code, § 352, subd. (a).) Even more time would have been required to prove that the conduct underlying C.'s two juvenile adjudications were crimes of moral turpitude in violation of sections 273.5 and 136.1, subdivision (b)(1) or (c). Defense counsel might have reasonably concluded that any further attempt to impeach C. based on the conduct underlying his juvenile adjudications would have been futile.

In any event, defendant's ineffective assistance claim fails because he has not satisfied the prejudice prong. Given the admitted impeachment evidence against C. and the strength of the prosecution's evidence, not to mention the likelihood that the trial court would have excluded further impeachment evidence under Evidence Code section 352, there is not "a reasonable probability" that defendant would have obtained a more favorable result had defense counsel sought to impeach C. with his juvenile

misconduct. (*Strickland*, *supra*, 466 U.S. at pp. 694; *Harrington*, *supra*, 562 U.S. at pp. 111-112.)

Defendant's ineffective assistance claims regarding his counsel's failure to impeach C. must be rejected.

5. *Closing Argument*

a. *The Prosecutor's Argument*

Defendant now claims that defense counsel rendered ineffective assistance of counsel by failing to object to the prosecutor's misstatements of law during closing argument.[8] The first alleged misstatement occurred when the prosecutor was discussing CALCRIM No. 1801 and the fair market value of the stolen firesuit. Without objection, the prosecutor defined "fair market value" as "the highest price [that] the property could have been sold for" without tying that price to the time of the theft. During that part of his argument, the prosecutor also queried, "How much would Matthew . . . have to pay to

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[8] Defendant also asserts prosecutorial misconduct, but we have concluded that he forfeited his contentions. " 'To preserve a claim of prosecutorial misconduct for appeal, a defendant must object and seek an admonition if an objection and admonition would have cured the harm.' [Citation.] The objection must be made on the same ground upon which the defendant now assigns error. [Citation.]" (*People v. Redd* (2010) 48 Cal.4th 691, 734.) "The lack of a timely objection and request for admonition will be excused only if either would have been futile or if an admonition would not have cured the harm. [Citations.]" (*People v. Powell* (2018) 6 Cal.5th 136, 171 (*Powell*).) " ' "[T]he absence of a request for a curative admonition" ' may likewise be excused if ' " 'the court immediately overrules an objection to alleged prosecutorial misconduct [and as a consequence] the defendant has no opportunity to make such a request.' " ' [Citation.] 'A defendant claiming that one of these exceptions applies must find support for his or her claim in the record. [Citation.] The ritual incantation that an exception applies is not enough.' [Citation.]" (*People v. Daveggio and Michaud* (2018) 4 Cal.5th 790, 853.) In this case, the trial court sustained defense counsel's single objection to the prosecutor's closing argument, and we find no support in the record for defendant's present claim that an objection would have been futile. "A prosecutor's misstatements of law are generally curable by an admonition from the court. [Citation.]" (*People v. Centeno* (2014) 60 Cal.4th 659, 674 (*Centeno*).) "None of the alleged instances of misconduct were so provocative that an advisement would have been ineffective, assuming one were called for." (*Powell*, *supra*, at p. 182.)

replace the suit? What's the highest price he would have had to pay?" The defense counsel objected to this last comment as irrelevant, but he did not ask for a curative admonition. The trial court sustained the objection. The prosecutor immediately returned to discussing the highest price for which the stolen property could have been sold.

A further alleged misstatement of law was the prosecutor's assertion that the highest price for the stolen firesuit was the price at which it had sold the year before the theft and not the price that Matthew had paid. The prosecutor used PowerPoint slides suggesting that the highest price was at least the Nascar Foundation's high bid of $1,250 in 2012. The prosecutor argued that the price that Matthew had paid for the firesuit was irrelevant. The prosecutor argued, "If someone sells something that is unique and they don't realize what the value is, it doesn't mean that that item is less valuable because they undersold it at a lower price. It's the highest price. You know the year before it sold for [$]1250. That's the highest price."

Defendant complains that defense counsel acted deficiently in failing to object to the prosecutor's allegedly improper arguments that (1) "the actual sale price of the suit was 'irrelevant' "; (2) the highest price was $1,250, which was from a sale that occurred the year before the theft and not "tethered to the time of the theft"; and (3) "the suit was 'undersold.' " As to the prosecutor's argument suggesting that the pawn shop sold the firesuit below market, defendant asserts that defense counsel should have objected on the ground the prosecutor was arguing facts not in evidence.

Defendant has failed to establish ineffective assistance of counsel with respect to his failure to object to the prosecutor's closing argument. As indicated, evidence of the firesuit's June 2012 auction price and Matthew's valuation of the firesuit as of the time of trial was admissible, circumstantial evidence of the firesuit's fair market value at the time of the theft. (See Evid. Code, §§ 210, 351.) Based on that evidence, and the inferences

therefrom, the prosecutor could reasonably argue that the pawn shop sale price did not represent its fair market value.

"[P]rosecutors are given wide latitude during argument and may urge the jury to draw any reasonable inference from the evidence. [Citation.]" (*Seumanu, supra,* 61 Cal.4th at p. 1331; see *id*. at p. 1363.) "Whether the inferences the prosecutor draws are reasonable is for the jury to decide. [Citation.]" (*People v. Dennis* (1998) 17 Cal.4th 468, 522.) Although the prosecutor should not assume or state facts that are not in evidence (*People v. Osband* (1996) 13 Cal.4th 622, 698), counsel is accorded "great latitude at argument to urge whatever conclusions counsel believes can properly be drawn from the evidence. (*People v. Thomas* (1992) 2 Cal.4th 489, 526.)" (*People v. Cash* (2002) 28 Cal.4th 703, 732.) "Such latitude precludes opposing counsel from complaining on appeal that the opponent's ' "reasoning is faulty or the conclusions are illogical." ' [Citation.]" (*Ibid*.) "The prosecutor was entitled to argue his interpretation of the evidence, just as defendant was entitled to argue his interpretation of that same evidence." (*People v. Valencia* (2008) 43 Cal.4th 268, 284.)

" '[T]he decision facing counsel in the midst of trial over whether to object to comments made by the prosecutor in closing argument is a highly tactical one[.]' [Citation.]" (*Centeno, supra,* 60 Cal.4th at p. 675.) " '[A] mere failure to object to evidence or argument seldom establishes counsel's incompetence' [Citation.]" (*Ibid*.) Defense counsel could have reasonably concluded that the prosecutor's argument regarding inferences to be drawn from the evidence regarding the firesuit's fair market value did not require objection, especially since the trial court had just instructed the jury on the applicable law and told the jury to follow its instructions rather than any conflicting comments on the law by attorneys in their closing arguments.

b. *Defense Counsel's Closing Argument*

Defendant argues that his counsel should have made a clear argument that "the fair market value of the suit was the purchase price days before the theft." He complains that

"[b]y arguing the weaknesses of [Matthew's] personal beliefs, [defense] counsel implied that [they] had some legal relevance." Defendant asserts that defense counsel provided ineffective assistance by failing to argue to the jury that "the only relevant evidence of the suit's fair market value was the purchase price nine days before the theft . . . ."

The thrust of defense counsel's closing argument with respect to the firesuit's fair market value was that the Paypal receipt (dated July 2, 2013) showed that Matthew had paid $375 for the firesuit and that the prosecutor, who had the burden of proof, had not introduced any other receipts. He suggested that there was no evidence as to what had happened to the suit's condition since it had last sold for $1,250. He argued that the condition of the stolen firesuit had deteriorated during the year before Matthew bought it.

Defense counsel noted that the firesuit had been posted on eBay for $500 on June 11, 2013 and emphasized that the listing had received no bids. He also argued that "[a] pawn shop is not going to post a suit for $500 that's worth $2,250" or whatever Matthew had claimed. Defense counsel cast doubt on Matthew's credibility by suggesting that he had lied to police about how much he had paid for the firesuit. Counsel pointed out that there was no appraisal or other evidence to support what Matthew claimed it was worth. Defense counsel maintained that that the prosecutor had failed to establish beyond a reasonable doubt that the value of the suit was more than $950.

"The decision of how to argue to the jury after the presentation of evidence is inherently tactical . . . ." (*Freeman*, *supra*, 8 Cal.4th at p. 498.) Defendant has not demonstrated that his counsel's closing argument fell outside the wide range of reasonable professional assistance. (See *Strickland*, *supra*, 466 U.S. at p. 689.)

D. *Cumulative Prejudice*

Defendant argues that the combined errors were cumulatively prejudicial and violated his constitutional rights to a fair trial. We have found no errors and certainly no errors resulting, either individually or together, in a fundamentally unfair trial. This is

not a situation where "a series of trial errors, though independently harmless, . . . [rose] by accretion to the level of reversible and prejudicial error. [Citations.]" (*People v. Hill, supra,* 17 Cal.4th at pp. 844-845.)

DISPOSITION

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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GREENWOOD, P. J.

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GROVER, J.

People v. Preader
H042497